UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GLENN E. NASK	:	
	:	Case No.
GLENN E . NASK and MICHELLE NASK	:	
vs.	:	
BANK OF AMERICA, N.A.	:	**JURY TRIAL DEMANDED**
and NATIONSTAR MORTGAGE, LLC	:	
and THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK as successor to JPMorgan Chase Bank, N.A. as trustee of SAMI II 2006-AR3	:	

COMPLAINT

Come Now the Plaintiffs, by and though counsel, and file this Complaint, and aver as follows:

PARTIES

1. Plaintiffs are Glenn C. Nask and Michelle Nask who are adult individuals residing at 425 Ivy Drive, Oxford, Chester County, Pennsylvania, 19363.

2. Defendant BANK OF AMERICA, N.A. (Hereinafter "BOA") is a National Banking Association with its place of business is 1800 Tapo Canyon Road, Simi Valley, California 93063.

3. Defendant NATIONSTAR MORTGAGE, LLC, LP (hereinafter "Nationstar") the servicer of plaintiffs' first mortgage effective, has a primary stated business address of 350 Highland Drive, Lewisville, Texas 75067 .

4. Defendant BANK OF NEW YORK MELLON, f/k/a THE BANK OF NEW YORK as successor trustee to JPMorgan Chase Bank, N.A. as trustee of SAMI II 2006 AR-3 is a Delaware Corporation and national banking association with its principal place of business at 225 Liberty Street, New York, NY 10281. Its CEO is presently Gerald Hassell. BONY is hereinafter referred to as "BONY, as trustee".

6. At all times pertinent hereto defendant Bank of America, N.A. and Nationstar Mortgage, LLC were acting as the agents, employees, aler egos and/or servants of their principal BONY, as trustee with respect to plaintiffs' first mortgage, which is the subject herein. the subject herein.

VENUE

7. Venue is proper in this court because the plaintiffs reside in this district, all defendants transact business within this district and the conduct complained of occurred within this district.

JURISDICTION

8. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available pursuant 28 U.S.C. §§2201 and 2202.

9. At all times pertinent hereto defendant servicers Bank of America, N.A. (hereinafter "BOA")and Nationstar Mortgage, LLC (hereinafter "Nationstar') were acting with actual and /or apparent authority and at the general or specific direction of their principal BANK OF NEW YORK MELLON, f/k/a THE BANK OF NEW YORK as successor trustee to JPMorgan Chase Bank, N.A. as trustee of SAMIII 2006 AR-3 (Hereinafter "BONY as trustee").

10. Defendant BONY as trustee claims to be the mortgagee of a first mortgage granted by plaintiffs on or about January 31s1, 2006 and upon the plaintiffs' residence located at 425 Ivy

Drive, Oxford, Chester County, Pennsylvania 19363. A true and correct copy of the mortgage is attached hereto as Exhibit "A".

11. BONY, as trustee, claims to be the assignee promisee of such mortgage as well as a Note alleged to have been signed by plaintiffs in the original principle amount of $279,000.00 and dated January 13st, 2006. A true and correct copy of the said note is attached hereto as Exhibit "B".

12. Plaintiffs encountered difficulty in making mortgage payments in 2011 and husband Glenn filed his first Chapter 13 bankruptcy on October 17th, 2012.

13. Plaintiffss applied to Bank of America for a loan modification to their adjustable rate mortgage and received paperwork confirming that they had in fact been given a loan modification which was executed by them in December 2012. A true and correct copy of the modification is attached hereto as Exhibit "C".

14. Plaintiffss made payments as required pursuant to the said modification for approximately six months when they received a notice that servicing of their mortgage would be transferred to Nationstar effective July 1st, 2013. A true and correct copy of the notice of change of servicer is attached hereto as Exhibit "D".

15. Despite the modification and the payments made and accepted thereunder, beginning in July 2013 , Nationstar refused payments made at the modified amount and instead told Plaintiffss there was no modification and demanded substantial pre-modification arrears be paid at once.

16. Nationstar returned Plaintiffs' timely July 2013 payment over a month later.

17. Because a modification was achieved effective December 6th, 2012, Plaintiff husband had let his 2012 Chapter 13 case be dismissed.

18. Nationstar told Plaintiffs they could apply for a new modification but they chronically denied knowledge of the previous modification despite payments thereunder.

19. Subsequently, in early 2014, Plaintiffs were told that new servicer Nationstar was refusing to honor the modification of 2012, denied that there were payments thereunder and refused to grant a new modification.

20. Despite the above described malfeasance of denial, Nationstar went on to reschedule a sheriffs sale of the plaintiffs' property and hence forced Plaintiffs back into bankruptcy on September 17th, 2014 at case no. 14-17459 elf.

21. The claim filed by Nationstar in that second bankruptcy, filed on October 7th, 2014 (hereinafter the "2014 POC") does not reference the loan modification at all. Said Claim is attached hereto as Exhibit "E".

22. In contrast to Nationstar's denial of the existence of modification, the 2014 POC does reference a modified interest rate of 2.125%.

23. Interestingly, there is no payment history attached to the 2014 POC but there is a payment history attached to the proof of claim filed in the 2016 case. Such "2016 POC" is attached hereto as Exhibit "F".

24. The 2016 POC, filed on June 30th, 2016, does have a copy of a loan modification attached. See Ex. "F" attached hereto, pages 46 through 51.

25. The "Rate Change Notice" which is part of the loan modification at page 50 of the 2016 claim (Ex. "F") states that borrower will have the rate of 2.125% until the step rate change onl/1/2018. At such time, 60 months after the modification commenced on 1/1/2013, the rate will go up to 3.375%.

26. In confusing contrast, Paragraph 1(a) of said modification (page 49 of 2016 POC

EX."F") states that the second change date will be the "1st" day of December 2015" when the rate shall be 3.125%. Then, the rate will change again on December lsl, 2016 to 3.375%, per page 49.

27. Other correspondence, dated on October 22nd, 2015 and directed to counsel seems to confirm the rates and dates quoted on page 49 of the 2016 POC EX. "F".

28. The payment history attached to the 2016 POC does include dates before the modification. This payment history is found at pages 4 through 8 of the 2015 POC (Ex."F").

29. That payment history proves that Plaintiffs' claims regarding refusal to accept modification payments are genuine. See EX.'T" Page 6.

30. The far left column on page 6 shows that although the modification was to take effect on January 1st, 2013, no adjustment to the payment due was made until March 20th of 2014; a point almost immediately before Plaintiffs was forced into bankruptcy on September 17th, 2014.

31. Page 6 of Exhibit "F". shows that Plaintiffs made payments pursuant to the modification in January through June 2013, the payments became interrupted in July 2013 when the new servicer, Nationstar, refused to accept modified payments and denied that a modification ever existed.

32. Oddly, seven months after the 2014 bankruptcy was filed, and a year and three months after the effective date of the/modification) the arrearage account was adjusted down to $25,679.76 from $248,697.25, see Ex."F" Page 7. This was a miraculous adjustment of $223,017.49, totally unbeknownst to Plaintiffs.

33. Defendants have claimed an arrearage of $45,401.11 in the present Chapter 13 case. Ex"F" Page 4.

34. Despite the granting of a mortgage modification effective January 1st, 2013, the

payment history attached to the 2016 POC has the following discrepancies:

A. The past due principal and interest was not adjusted at any time during 2013; and

B. The past due P/I was not adjusted until 15 months after modification was approved resulting in additional interest, late fees and costs being assessed against plaintiffs in excess of $30,000.00; and

C. Instead of resetting the arrears to zero as a result of the modification, defendants any or all reset the arrears to $13,679.76 on 3/20/2014. See Page 7 of Exhibit "F".

D. The proper contractual payment amount was never entered into the system until one month before plaintiffs were forced into bankruptcy in April 2014 ; further supporting plaintiffs' contention that Nationstar, acting on its own or under direction of BONY as trustee, insisted upon denying that there was a modification; and

E. The correction of the contractual amount came twenty months after the modification took effect. See Exhibit "F" Page 7 (payment history)

F. Defendants sent statements to plaintiffs more than a year and three months after the January 1, 2013 effective date of the modification,(stating that there was no modification. Such statements with totally conflicting information are attached hereto as Exhibit "H".

G. Defendants sent a tax and interest statement for 2013 to plaintiffs showing no mortgage interest paid in 2013 when in fact there was interest paid per the Ex. "F" Proof of Claim. The Said Tax Statement is attached hereto as Exhibit "I".

35. Plaintiffs believe and therefore aver that without their Bankruptcy in 2014 BONY as

trustee, and its servicers, would have continued to deny the existence of the modification.

36. Defendants, any or all, continue, until the June 30th, 2016 filing of their proof of claim, to attempt to collect incorrect sums by failing to abide by their own interest terms as set forth in the modification, pages 49 and 50 of the 2016 Proof of claim Ex. "F".

37. The attempts of defendants, any or all, to renounce the modification and incessantly contradict its terms have caused great stress and anxiety and medical complications to plaintiffs as set forth below.

38. As a direct result of the negligent improper and illegal activities of defendants, any or all of them, plaintiff Glenn Nask has suffered a host of medical problems including:

A. Stroke; and

B. Transient Ischemic Attacks; and

C. High Blood Pressure; and

D. Myocardial infarction, Heart Attack; and

E. Public shame and embarrasment; and

F. Nervousness, inability to sleep; and

G. Loss of consortium

Plaintiff Michelle Nask has suffered:

A. Great emotional stress; and

B. Public humiliation shame and embarrassment; and

C. Unnecessary humiliation, pain, shame and embarrassment for her children; and

D. Loss of consortium; and

E. Loss of income; and

F. Nervousness, inability to sleep.

COUNT I

AGAINST NATIONSTAR MORTGAGE, LLC AND BANK OF AMERICA, N.A.

VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

15U.S.CSec. 1592etseq

39. Paragraphs one through 33 are hereby incorporated by reference.

40. Defendant Nationstar Mortgage, LLC was the servicer of the subject mortgage loan beginning in June 2013 and acted as the agent of its principal BONY as trustee.

41. Until June of 2013 the servicing of the loan was handled by Bank of America, who negotiated and drafted the loan modification acting as agent for BONY as trustee.

42. The loan was in default on the transfer date so far as Nationstar had consistently claimed. The loan was in default when it was assigned to BONY on January 4th, 2010 See Page 5 of Ex. "F" on the line dated 1/1/2010 showing an arrearage of $25,171.92.

43. Mortgage Servicers are debt collectors pursuant to the definition in 15 U.S.C. 1692a (6) but excluded from such definition if the account was transferred to them while not in default pursuant to 15 U.S.C. Sec. 1592a (6)(F) (iii).

44. This account was in default when transferred to BOA and when transferred to Nationstar and when assigned to defendant BONY. Therefore FDCPA is applicable to the activities of all defendants.

45. The first Assignment of the subject mortgage alleging an effective date of January 4th, 2010, yet executed July 12th, 2010 an recorded July 20th, 2010 is attached hereto as Exhibit "G".

46. This action arises out of illegal acts and omissions of above-named defendants, any

or all, who used false, deceptive, misleading, unfair, abusive, and oppressive practices and means in conjunction with attempts to collect an alleged debt or debts and thereby violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p ("FDCPA") and the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. §§ 2270.1-2270.6 ("FCEUA"), and Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 to 201-9.3 ("UTPCPL"). Plaintiff seeks actual damages, statutory damages, treble damages, costs, and attorney's fees.

47. At all times relevant to this Complaint, Defendants BAC Home Loans Servicing, LP and Bank of America, N.A. were "debt collectors" as that term is defined by 15 U.S.C. § 1692a(6) and FCEUA 73 P.S. § 2270.3.

48. Debt Collector Defendants, (hereinafter "Collectors")at all times relevant hereto, used an instrumentality of interstate commerce or the mails in a business the principal purpose of which was the collection of debts, who regularly collected or attempted to collect, directly or indirectly, debts owed or due asserted to be owed or due another. Based on said activity or activities, Defendants are debt collectors within the meaning of FDCPA, 15 U.S.C. § 1692a (6), and FCEUA, 73 P.S. § 2270.3.

49. Defendants Nationstar and BOA have, and do, consistently try to collect at least $13,718.16 in excess of the actual amount due on the loan since March 20th, 2014.

50. The FDCPA at U.S.C. 15 Sec. 1592k provides that attorneys fees and expenses may be recovered where the act is violated.

51. The collector's misrepresentations made to defendants in the course of the collection process constitute a violation of the following sections of the Fair Debt Collection Practices Act 15 U.S.C:

(A) Section 1692e(2)(A) by falsely representing the character, amount and legal status of the debt; and

(B) Section 1592e(8) by reporting false information to a credit bureau; and

(C) Section 1692e(9) (13) by using simulated process or official documents; and

(D) Section 1692e(8) by failing to report the account as in dispute during the RESPA period of repose.

(E) Defendants, by continuing to charge late fees and interest and by holding plaintiffs' payments in a suspense account, failed to cease collection on a disputed debt in violation of 15 U.S.C. Sec 1692g(b).

52. Some or all of the alleged violations of the Fair Debt Collection Practices Act have occurred within one year of the original filing of this complaint.

53. The violations, even if performed by the defendant collectors acting as agent and employee servicers, occurred at the specific direction and instruction of non-collector defendants or any of them.

54. As a result of collector Defendants' unlawful debt collection practices, Plaintiffs have suffered and continue to suffer financial harm including but not limited to :

a. Increased interest expense on their mortgage; and

b. Shame, embarrassment and shunning in their community; and

c. Improperly charged late fees on their mortgage;

d. Intentionally subjecting their residence to sheriffs sale based upon a clearly incorrect and inflated judgment amount; and

e. Damage to their credit report and credit score;

f. Attorney's fees and costs associated with attempting to prosecute plaintiffs' rights

g. health and consortium injury as enumerated above and herein incorporated.

WHEREFORE, Plaintiffs respectfully request that this honorable court enter judgment for Plaintiffs and against Defendants, any or all, for the following:

A. A declaratory judgment that defendants' or any of their conduct violated the Fair Debt Collection Practices Act, 15 U.S.C. Sec 1692, et seq; and

B. Award actual damages of at least $ 13, 718.16 or such other amount proven at trial; and

C. Award statutory damages pursuant to 15 U.S.C. sec 1692k; and

D. Grant other such relief as the court may deem just and proper; and

E. Award Interest, costs and reasonable attorneys fees pursuant to the Act; and

II

COUNT TWO AGAINST ANY OR ALL DEFENDANTS PURSUANT TO THE PENNSYLVANIA FAIR CREDIT AND UNIFORMITY ACT 73 P.S. Sec. 2270.1 et seq AND THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW 73 P.S. Sec. 201-1 et seq.

55. Paragraphs one through 49 are hereby incorporated by reference.

56. The mortgage debt involved in this case is a debt upon plaintiffs' residence as the result of a refinance of said residence and is therefore a consumer debt which is not a purchase money mortgage as defined under the FCEUA and the judicial interpretations thereof.

57. Defendants BAC Home Loans Servicing, LP and Bank of America, N.A. are debt collectors pursuant to the Pennsylvania Fair Credit and Uniformity Act (hereinafter "FCEUA")

defined in 73 P.S. Section 2270.3.

58. The FCEUA at Section 2270.4(a) provides:

> It shall constitute an unfair or deceptive debt collection act or practice under this act if a debt collector violates any of the provisions of the Fair Debt Collection Practices Act (Public Law 95-109 , 15 U.S.C. Sec. 1692 et seq.)

59. Any violation of the FDCPA by debt collectors is therefore also a violation of the FCEUA pursuant to that section 2270.4(a).

60. Any or all of Defendants BONY as Trustee, Nationstar Mortgage, LLC and Bank of America, N.A. are "creditors" as defined in the FCEUA Section 2270.3.

61. The creditor defendants have committed an unfair or deceptive act or practice as defined in FCEUA Section 2270.4 (b)(5)(ii) by falsely representing the character, amount or legal status of the plaintiffs' debt as described above.

62. The creditor defendants have committed an unfair or deceptive act or practice as defined in FCEUA Section 2270.4 (b)(6)(i) by:

a. collecting any amount, including interest, fee, charge or expense incidental to the principal obligation, unless such amount is expressly authorized by the agreement creating the debt or permitted by law as described above; or

b. establishing a mortgage modification agreement with plaintiffs with a fixed payment amount and refusing to accept that contractual amount while re-exposing plaintiffs residence to sheriffs sale; and

c. sending bills, invoices and statements to plaintiffs which effectively repudiate the contract of modification just made; and then

d. proceeding to litigate upon such repudiation despite written and recorded documents to the contrary, all of which were clearly negotiated on behalf of the principal, BONY as trustee.

63. Specifically, plaintiffs allege that the action in attempting to collect a debt which was overstated by $13,718.16 and shamelessly refusing to rectify such an outrageous and illegal act constitutes a violation of the FCEUA by the collector and creditor defendants, or any of them.

64. The above enumerated violations of the FCEUA are by definition, of the FCEUA itself at Section 2270.5(a), Unfair and Deceptive Trade Practices pursuant to the Pennsylvania UTPCPL 73 P.S. Section 201-1 et seq.

65. Specifically FCEUA 2270.5 states that:

> " a violation of the FCEUA shall constitute a violation of the Act of December 17, 1968 (P/L/ 1224, No. 387) known as the Unfair Trade Practices and Consumer Protection Law".

66. As such, plaintiffs are entitled, upon proof of their FCEUA case, to all remedies available under the UTPCPL, except such shall not be cumulative with any remedies granted by this court under the FDCPA.

67. As a result of collector Defendants' unlawful debt collection practices, Plaintiffs have suffered and continue to suffer financial harm including but not limited to :

a. Increased interest expense on their mortgage; and

b. Shame, embarrassment and shunning in their community; and

c. Improperly charged late fees on their mortgage;

d. Intentionally and continually subjecting plaintiffs' residence to sheriffs sale based upon a clearly incorrect and inflated judgment amount; and

e. Damage to their credit report and credit score;

WHEREFORE, Plaintiffs respectfully request that this honorable court enter judgment for

Plaintiffs and against Defendants, any or all, for the following:

A. A declaratory judgment that defendants' conduct violated Pennsylvania's Fair Credit Extension and Uniformity Act, 73 P.S. Sec. 2270.1 et seq; and

B. Award actual damages of at least $1,000,000.00 or such other amount proven at trial; and

C. Award treble damages pursuant to 73 P.S. Sec. 201-9.2; and

D. Grant other such relief as the court may deem just and proper; and

E. Award Interest, costs and reasonable attorneys fees pursuant to 73 P.S. Sec. 201-9.2 of the Act; and

F. Award Reasonable Attorney's fees and costs associated with prosecuting plaintiffs' rights pursuant to the statute.

III

COUNT THREE - AGAINST ANY OR ALL DEFENDANTS PURSUANT TO THE UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW 73 Pa. C.S. 201-1 et seq ALSO KNOWN AS THE PENNSYLVANIA UNFAIR AND DECEPTIVE PRACTICES ACT (UDAP)

68. Paragraphs one through 67 are hereby incorporated by reference.

69. At all times relevant hereto the defendants were engaged in "Trade or Commerce" as defined in 73 Pa. C.S. 201-(3) of the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

70. The representations made by Defendants, any or all, or their representatives, whether explicit or implied, that plaintiffs did not have a mortgage modification effective January 1, 2013, when in fact they did have such resulted from malfeasance, fraud and/ or wilfulness of

defendants acting in their own self interest and in violation of state and federal law.

71. All of the above described deceptive and misleading behavior was repeated on numerous occasions to the detriment of many citizens of the Commonwealth of Pennsylvania and numerous other states. Defendant has established a pattern and practice of repeatedly engaging in the boldly deceptive and unfair behavior described herein.

72. The defendants, or any of them have therefore established a pattern of easily discernable outrageous behavior against plaintiffs and other wherein one servicer grants a mortgage modification and then subsequently the Trust, Defendant U.S. Bank Trustee, switches servicers and intentionally does not or fails to supply the subsequent servicer with information that the mortgage has been modified.

73. Alternatively, upon information and belief, the subsequent servicer knows or has reason to know of the modification but denies the existence thereof in an attempt to coerce the consumer.

74.Those violations, which consist of deviously and intentionally using incorrect numbers or figures of amounts due or in arrears to frustrate the consumer.

75.Any or all of the above and below described activities, whether determined to be a violation of the related cited federal laws or not, constitute unfair and deceptive practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. Sec. 201-1 et.Seq (UDAP).

WHEREFORE, Plaintiffs respectfully request that this honorable court enter judgment for Plaintiffs and against Defendants, any or all, for the following:

A. A declaratory judgment that defendants' conduct has violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. Sec. 201-1 et. Seq (UDAP).

B. Award actual damages of at least $239,099.50 or such other amount proven at trial; and

C. Award treble damages pursuant to 73 P.S. Sec. 201-9.2; and

D. Grant other such relief as the court may deem just and proper; and

E. Award Interest, costs and reasonable attorneys fees pursuant to 73 P.S. Sec. 201-9.2 of the Act; and

F. Award Reasonable Attorney's fees and costs associated with prosecuting plaintiffs' rights pursuant to the statute.

IV

COUNT FOUR PLAINTIFFS AGAINST ANY OR ALL DEFENDANTS FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

76. Plaintiffs incorporate herein paragraphs 1-75 as if same was herein set forth.

77. Defendants are obligated by contract and common law to act in good faith and to deal fairly with each borrower.

78. Defendant BONY, as trustee, is now the principal in a contract, a promissory note a mortgage and a mortgage modification between itself and plaintiffs.

79. As such a contracting party, BONY, as trustee, owes the plaintiffs the duty to act in good faith with its contracting parties and to deal fairly with them pursuant to the covenant of good faith and fair dealing.

80. The purpose of the covenant is to guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance.

81. The defendants, any or all, by and though their agents, servants and employees routinely and regularly breached this duty by:

a. failing to perform loan servicing functions consistent with its responsibilities to borrowers; and

b. failing to properly supervise its agents and employees including, without limitation, its loss mitigation and collection personnel and its attorneys; and

c. routinely denying the existence of extant loan modifications to extract exorbitant fees from borrowers; and

d. failing to follow through on verbal, written and implied promises; and

e. failing to follow through on contractual obligations; and

g. attempting to collect an illegal and false payment amounts whilst attempting to deprive plaintiffs of their residence.

82. As a result of these failures to act in good faith and in the absence of fair dealing, defendants, or any or all of them, have caused plaintiffs harm.

WHEREFORE, plaintiffs request a judgment against the plaintiff or against the amount due under the mortgage and note in the form of a counterclaim, setoff or recoupment for an amount in excess of Fifty-Thousand Dollars($50,000.00).

Respectfully Submitted:
/s/ Joseph F Claffy, Esq.

Joseph F. Claffy, Esquire
ID No. 35142
26 South Church St.
West Chester, PA 19382
610 429-0900